

PRACTICE XXXIV. ATTORNEY GENERAL

A. When Notice to the Attorney General Is Required.

1. In connection with a petition for informal probate or appointment pursuant to G.L. c. 190B, §3-306 or in formal testacy proceedings pursuant to §3-403, notice to the Office of the Attorney General, Division of Public Charities, is required if:

- a. There is no spouse or heir of the decedent; or
- b. Any devisee is a charity; or
- c. A will (1) contains a devise to the trustee(s) of an inter vivos trust, where the trust instrument provides for one or more charitable gifts; and (ii) the personal representative(s) and the trustee(s) are the same persons or entities or the trustee or one of the trustees has a beneficial interest in the estate or trust.

Where notice is required because of a charitable interest, the initial notice shall be accompanied by a copy of the will and, where the charitable interest is through a trust, either a copy of the trust instrument or a summary of the charitable gifts contained therein certified to be accurate by the trustee or his or her representative.

2. With respect to any estate as to which notice is required under Paragraph A1 above, notice shall also be given to the Office of the Attorney General, Division of Public Charities, of any subsequent filing by the personal representative(s) of such estate relating to a matter which will affect the charitable interest, including without limitation the allowance of accounts, the sale of an asset, the compromise of a claim, the removal of a fiduciary, and the appointment of a successor fiduciary. A notice relating to the allowance of an account shall be accompanied by a copy of the account.

3. Notice to the Office of the Attorney General, Division of Public Charities, is required in connection with a petition or complaint filed by (a) the trustee(s) of a trust, created either by written instrument or by will, under which there are present or future charitable interests; (b) a charitable corporation; and (c) any other entity holding property in a fiduciary capacity for the benefit of a charitable entity or purpose. The notice shall be accompanied by a copy of the petition or complaint and a copy of the governing instrument(s) unless provided previously.

B. Attorney General as a Necessary Party to an Action.

In matters before the court as set forth below, the Attorney General shall be a necessary party. The plaintiff shall not present to the court any request for affirmative action with respect to the relief being requested unless the Attorney General has been made a party with proper service. The matters to which this section applies are:

- 1. A complaint by a fiduciary for cy pres relief or for authority to deviate from the

terms of a governing instrument which deviation may affect a charitable interest.

2. A complaint by a fiduciary for instructions or a declaratory judgment in which the relief sought may affect a charitable interest.

3. Compromise of a will which compromise may affect a charitable interest.

4. A complaint by a fiduciary for a license to sell an asset in circumstances in which a charitable interest may be affected by the sale.

5. A complaint by a fiduciary for authority to consolidate or terminate a trust pursuant to G.L. c. 190B or otherwise, which consolidation or termination may affect a charitable interest.

C. Attorney General as an Interested Party.

In all other matters before the court or magistrate where the Attorney General is not a necessary party, as described above in Paragraph B, but is an interested party entitled to notice of the proceedings and an opportunity to be heard, the matter, provided notice is given and the notice period has expired, may be presented to the court or magistrate, in an informal or uncontested formal proceeding, without regard to whether the Attorney General has assented thereto or indicated that he or she does not wish to be heard.

Amended _____, effective _____.

Reporter's Notes –

The Practice is amended as a result of the enactment of the Massachusetts Uniform Probate Code, G.L. c. 190B.